162 U.S. 547

# TRANSCRIPT OF RECORD.

162-547

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 756.

W. A. HARWOOD, APPELLANT,

*vs.*

A. WENTWORTH.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED SEPTEMBER 30, 1895.

(16,046.)

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INDEX.


| | Original. | Print. |
|---|---|---|
| Caption | 1 | 1 |
| Transcript from district court | 2 | 1 |
| Complaint and petition for mandamus | 2 | 1 |
| Affidavit for writ of mandamus | 4 | 3 |
| Order for alternative writ of mandamus | 6 | 4 |
| Answer | 6 | 5 |
| Judgment | 7 | 5 |
| Motion for new trial | 7 | 6 |
| Statement of facts and bill of exceptions | 8 | 6 |
| Affidavit of A. J. Doran | 8 | 7 |
| Affidavit of J. H. Carpenter | 9 | 7 |
| House bill No. 9, &c. | 10 | 8 |
| Affidavit of Charles F. Hoff | 13 | 11 |
| Affidavit of Charles D. Reppy | 15 | 13 |
| Grounds for new trial | 17 | 15 |
| Judge's certificate | 17 | 15 |
| Assignment of errors | 18 | 16 |


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| | Original. | Print. |
|---|---|---|
| Bond on appeal | 19 | 17 |
| Clerk's certificate | 21 | 18 |
| Stipulation to submit | 22 | 18 |
| Order setting cause for hearing | 22 | 19 |
| Order passing cause | 22 | 19 |
| Order granting time to file briefs, &c | 23 | 19 |
| Stipulation as to entry of judgment in vacation | 23 | 19 |
| Judgment | 23 | 20 |
| Order allowing appeal | 24 | 20 |
| Bond on appeal | 25 | 20 |
| Assignment of errors | 26 | 22 |
| Clerk's certificate | 27 | 22 |

1 In the Supreme Court, Territory of Arizona.

A. WENTWORTH, Plaintiff and Appellee,
*vs.*
W. A. HARWOOD, Defendant and Appellant. } Appeal from First District.

*Transcript on Appeal.*

Barnes & Martin, att'ys for appellant.
Geo. W. Swain, att'y for appellee.

Filed —— —, 1895.

——— ———, *Clerk.*

2 In the District Court of the First Judicial District of the Territory of Arizona in and for Cochise County.

A. WENTWORTH, Plaintiff,
*vs.*
W. A. HARWOOD, Defendant.

*Petition for Writ of Mandamus.*

Comes now the above-named plaintiff and complains of the above-named defendant, and for cause of action alleges:

1st. That both plaintiff and defendant are residents of Cochise county, Territory of Arizona.

2nd. That at the general election held throughout the Territory of Arizona on the 6th day of November, A. D. 1894, plaintiff was duly elected to the office of county recorder of said county of Cochise, and thereafter duly qualified as such, and on the first day of January, 1895, entered upon the discharge of his duties as such recorder and ever since has been and now is the duly elected, qualified, and acting recorder of said county of Cochise.

3rd. That at the time the plaintiff was so elected to said office and entered upon the discharge of the duties thereof as aforesaid said county of Cochise was what was denominated a first-class county of said Territory.

4th. That on the — day of January, 1894, at a regular meeting of the board of supervisors of said Cochise county, the defendant was duly elected and appointed to the office of clerk of said board of supervisors of said Cochise county, and thereafter and within the time required by law duly qualified as such clerk and entered upon the discharge of the duties of his said office.

5th. That thereafter and on or about the 21st day of March, 1895, the Legislative Assembly of the Territory of Arizona, for the purpose of classifying the counties of said Territory
3 and fixing the compensation of county officers therein, passed an act entitled "An act classifying the counties of the Territory and fixing the compensation of officers therein," which was approved the 21st day of March, A. D. 1895, by the governor of said

Territory; that said act of the legislature went into force and effect thirty days after its passage and approval, to wit, on the 21st day of April, 1895; that by the provisions of said act the counties of said Territory were divided into six classes, according to the assessed valuation of the property in said several counties; that according to said classification of said counties as provided in said act and according to the terms thereof said county of Cochise became and was and is a county of the third class; that by the provisions of the third subdivision of sec. 2 of said act recorders of the third, fourth, fifth, and sixth class counties are made *ex officio* clerk of the board of supervisors of the respective counties.

And plaintiff avers that as such recorder of said county of Cochise he is now and has been since said 21st day of April, 1895, *ex officio* clerk of the board of supervisors of said county of Cochise, and as such is entitled to the possession of all of the books, papers, records, seal, and documents pertaining to said office of clerk of the board of supervisors of said county of Cochise; that said books, papers, records, seal, and documents pertaining to said clerk's office are now in the hands of and in the possession and under the control of said defendant.

That heretofore and subsequent to the date when the said act of the legislature went into effect as aforesaid, to wit, on the — day of May, 1895, plaintiff went to the office of said defendant, in the city of Tombstone, in said Cochise county, where said books, papers, records, seal, and documents pertaining to said office were and are kept by said defendant, and then and there, as such recorder and *ex officio* clerk of the board of supervisors of said county, demanded of defendant that he deliver to plaintiff, as recorder and *ex officio* clerk of the said board of supervisors of said county, said books, papers, records, seal, and documents pertaining to said office, but to deliver the same or any of them to plaintiff defendant then and there refused and ever since has and still does refuse; but, on the contrary, said defendant has ever since said demand and still does wrongfully and unlawfully detain possession of all of said books, papers, records, seal, and documents pertaining to said office of *ex officio* clerk of said board of supervisors, and deprives plaintiff of the possession, to plaintiff's damage in the sum of three hundred dollars.

Wherefore plaintiff prays that a writ of mandamus be issued out of the hon. court commanding him, the said defendant, W. A.
4 Harwood, and *ex officio* clerk of the board of supervisors of said county of Cochise, to forthwith deliver all of said books, papers, records, seal, and other documents pertaining to said office of clerk to plaintiff as such recorder and *ex officio* clerk of said board of supervisors of said county of Cochise, and that plaintiff be adjudged to be as such recorder and *ex officio* clerk of the board of supervisors of said Cochise county, and that defendant be enjoined from exercising or performing any of the duties of said office, and for such other and further order, judgment, and decree as may be just and proper in the premises, and for costs of suit.

GEO. W. SWAIN,
*Att'y for Plaintiff.*

Endorsed: No. 1867. Petition for writ of mandamus. Filed May 1st, 1895. S. C. Bagg, clerk, by A. H. Emanuel, dep. cl'k.

And thereupon and on the 31st day of May, 1895, the plaintiff filed his affidavit for writ of mandamus as follows:

A. Wentworth, herein being duly sworn, deposes and says that he is the duly elected, qualified, and acting recorder of said Cochise county; that on the — day of January, 1894, at a regular meeting of the board of supervisors of said Cochise county, the defendant was duly elected and appointed to the office of clerk of said board of supervisors of said county, and thereafter and within the time required by law duly qualified as such clerk and entered upon the discharge of the duties of said office.

That on or about the 21st day of March, 1895, the Legislative Assembly of the Territory of Arizona, for the purpose of classifying the counties of said Territory and fixing the compensation of county officers therein, passed an act entitled An act classifying the counties of the Territory and fixing the compensation of county officers therein, which said act was approved the 21st day of March, 1895, by the governor of said Territory.

That said act went into force and effect thirty days after its passage and approval, to wit, on the 21st day of April, 1895; that by the provisions of said act the counties of said Territory were divided into six classes, according to the assessed valuation of the property in said several counties.

That according to said classification of said counties, as provided in said act and according to the terms thereof, said county of Cochise became and was and is a county of the third class.

That by the provisions of the third subdivision of sec. 2 of
5 said act recorders of the third, fourth, fifth, and sixth class counties are made *ex officio* clerks of the boards of supervisors of the respective counties.

And plaintiff avers that as such recorder of said county of Cochise he is now and has been since said 21st day of April, 1895, *ex officio* clerk of the board of supervisors of said county of Cochise, and as such is entitled to the possession of all the books, papers, records, seal, and documents pertaining to said office of the clerk of the board of supervisors of said county of Cochise.

That said books, papers, records, seal, and documents pertaining to said clerk's office are now in the hands of and in the possession and under the control of said defendant, W. A. Harwood.

That heretofore and subsequent to the date when the said act of the legislature went into effect as aforesaid, to wit, on the 27th day of May, 1895, petitioner went to the office of said defendant, W. A. Harwood, in the city of Tombstone, in said Cochise county, where said books, papers, records, documents, and seal pertaining to said office were and are kept by said defendant, W. A. Harwood, and then and there, as such recorder and *ex officio* clerk of the board of supervisors of said Cochise county, demanded of W. A. Harwood, ex-clerk of the board of supervisors of said Cochise county, that he deliver to petitioner as recorder and *ex officio* clerk of the said board

of supervisors of said county said books, papers, records, seal, and documents pertaining to said office, but to deliver the same or any of them to petitioner defendant then and there refused and ever since has and still does refuse; but, on the contrary, said W. A. Harwood has ever since said demand and still does wrongfully and unlawfully detain the possession of all of said books, papers, records, seal, and documents pertaining to said office of *ex officio* clerk of the said board of supervisors, and deprives petitioner from the possession thereof.

Wherefore affiant shows that he has no other plain, speedy, or adequate remedy at law against said W. A. Harwood aforesaid, and therefore prays—

That an alternative writ of mandamus issue, as provided by law, commanding the said W. A. Harwood, ex-clerk of the board of supervisors, — forthwith deliver to your petitioner all of said books, papers, records, seal, and documents pertaining to said office of clerk of the board of supervisors of Cochise county, or that the said W. A. Harwood show cause at such time and place as may be determined why he has not done so, and that the same be made peremptory on the hearing.

A. WENTWORTH.

Subscribed and sworn to before me this 28th day of May, 1895.

FRED. CASTLE,
*Notary Public.* [SEAL.]

G. W. SWAIN,
*Att'y for Plaintiff.*

6 Endorsed: No. 1867. Affidavit for mandamus. Filed May 31st, 1885. S. C. Bagg, clerk, by A. H. Emanuel, dept. clerk.

And thereupon and on the 29th day of May, 1895, the following order was made by the judge of said court, to wit:

On reading and filing the affidavit of A. Wentworth, the petitioner above named, dated the 28th day of May, 1895, it is hereby ordered that an alternative mandamus issue out of and under the seal of this court, directed to the said W. A. Harwood, commanding the said Harwood immediately after the receipt of this writ to deliver to said A. Wentworth, petitioner herein, all of the books, papers, records, seal, and documents pertaining to the said office of clerk of the board of supervisors of the said county of Cochise now in his possession, or to show cause before me, at the district courthouse, in the city of Tombstone and county of Cochise, on the fourth (4) day of June, 1895, at ten o'clock of the forenoon of said day, or as soon thereafter as counsel can be heard, why he has not done so and why the said alternative writ should not be made final and peremptory in the premises.

Witness my hand at Tucson, Pima county, Arizona, this 29th day of May, A. D. 1895.

J. D. BETHUNE,
*District Judge.*

Endorsed: Filed May 31st, 1895. S. C. Bagg, clerk, by A. H. Emanuel, dept. clerk. No. 1867. Order for writ of alternate mandamus to issue.

And thereupon, on the 3rd day of June, 1895, the defendant filed his answer as follows:

And now come the defendant and to the complaint says that the complaint and writ does not state facts sufficient to authorize this writ. Wherefore he prays judgment.

And defendant, for answer to the complaint, answers and admits the residence of the parties as alleged.

Admits the allegations of pr. II of the complaint, and also par. III; admits the allegations of par. IV as alleged in the complaint.

Denies par. V, but admits that the books and papers, etc., pertaining to said office are in possession and control of defendant; admits that on the — day of May, 1895, plaintiff made demand for the same as alleged, and the refusal of defendant to surrender as alleged.

Defendant alleges that he is the duly appointed and qualified clerk of the board of supervisors, and as such is lawfully entitled to hold said office.

He alleges that the proposed act of the Legislative Assembly is not a law; that the same did not pass the said assembly as alleged.

7 He alleges that the said act as the same passed both houses of said Legislative Assembly contains a provision, section, and clause that the said act should not take effect and be in force before January the first, 1897; that the said clause or section was stricken out, omitted, and taken from said act after the same had passed both houses of said assembly; that that clause is a part of said act, and that the said act if valid does not take effect until —.

That there was also a clause that "all acts or parts of acts in conflict with — act are hereby repealed," and that said clause was omitted and stricken out in the same way.

Alleges that the said alleged act was not duly passed by the Legislative Assembly or by either house thereof, and that the same is not a law.

And this he prays may be adjudged of by the court according to law.

And thereupon and on the 14th day of June the following order was made and entered of record upon the minutes of said court, to wit:

And now this cause coming on to be heard George W. Swain appeared for the plaintiff and Wm. H. Barnes for the defendant. The cause was tried by the court without a jury by consent of both parties, and the parties, to maintain the issues, offered in evidence a stipulation as to the facts in the case heretofore filed, and the court, having heard the argument of counsel, does find for the plaintiff, and orders and directs that a mandamus be issued as

prayed for in the complaint, and the defendant thereupon made his motion for a new trial, and the court then and there overruled said motion, and the defendant then and there instantly in open court excepted and gave notice of an appeal to the Supreme Court in open court.

And thereupon, on the 14th day of June, 1895, defendant filed his motion for a new trial as follows:

And now comes the defendant herein and moves the court to set aside the findings and the judgment herein and for a new trial of said cause upon the grounds—

1st. That the evidence does not sustain the judgment.

2nd. The court erred in holding that the law filed with the secretary of the Territory and signed by the president of the council and speaker of the house was conclusive evidence of the fact that the bill had become a law, and in holding that other evidence could not be introduced to show that the bill signed by the governor and presiding officers aforesaid had not passed either house of the General Assembly.

8 Endorsed: No. 1868. Filed June 14th, 1895. Scott White, clerk, by A. H. Emanuel, dept. clerk.

And thereupon, on the 14th day of June, 1895, the defendant filed his statement of facts and bill of exceptions as follows:

Be it remembered that this cause came on to be heard before the court sitting without a jury, a jury having — expressly waived by the respective parties, George W. Swain appearing for plaintiff and Wm. H. Barnes for defendant, and it was agreed by the parties that law No. 51, entitled "An act classifying the counties of the Territory and fixing the compensation of county officers therein," as it appears on page- 68, 69, and 70 of the Laws of Arizona for 1895, is filed with the secretary of the Territory and is signed as it appears to be signed on page 70 of said laws, and also to maintain the issues there was introduced the following agreed statement of facts in words and figures following, to wit:

And also the original house bill No. 9 and endorsements thereon and the first engrossed bill, house bill No. 9, and endorsements thereon, and the second engrossed bill, with the endorsements thereon, a copy of which, with endorsements, is included in the following agreed statement of facts:

And thereupon, on the 3rd day of June, 1895, the following agreed state- of facts or agreed case was submitted and agreed to by the respective parties, to wit:

This cause shall be tried upon the following agreed statement of facts or agreed case, to wit:

It is agreed that act No. 51 of the 18th Legislative Assembly of the Territory of Arizona, as it appears in the published laws of that session, on pages 68, 69, and 70, is filed and in custody of the secretary of the Territory and signed by the governor, speaker, and president as it there appears.

It is agreed that the affidavits heretc attached of A. J. Doran and J. H. Carpenter and the affidavits of Charles D. Reppy and Charles F. Hoff and the exhibits thereto attached shall be considered as evidence before the court and as a true statement of the journals and proceedings of both houses and shall be treated as evidence of the fact therein stated, subject to the objection by the plaintiff that the enrolled bill signed by the governor and lodged with the secretary of the Territory cannot be attacked by any evidence.

And it is further agreed that either party may offer such other evidence as he desires and may be competent.

A. J. Doran, being first duly sworn, on oath states that he
9 is the president of the council of the present Legislative Assembly of the Territory of Arizona.

That the session terminated March the 21st last.

He states that it was the custom for him as such president to sign bills when presented to affiant by the chairman of the enrolling and engrossing committee of either house.

He states that it was his custom and it had been the practice to so sign bills when presented, whether the council was in session or not, though ordinarily it would be when the council was in session.

If signed when the council was in session, there was no formality gone through with. The attention of the council was not called to the fact that the president was about to sign a bill, nor was the business of the council interrupted for the purpose of signing the bill, nor was a member who was speaking interrupted.

The facts are that a bill was simply handed up to the president and he would sign his name and hand it back.

And further affiant saith not.

A. J. DORAN.

Subscribed and sworn to before me this 20th day of May, 1895.

[SEAL.] R. L. LONG,
*Notary Public, Maricopa County, Arizona.*

J. H. Carpenter, being first duly sworn, on oath states that he is speaker of the house of representatives of the present Legislative Assembly of the Territory of Arizona.

That the session terminated on March 21st last. He states that it was the universal custom for him as such speaker to sign bills when presented to affiant by the chairman of the enrolling and engrossing committee of either house; that affiant so signed them without reading them or without comparing them in any manner, and that as a matter of fact he did not compare any one bill signed by him before he signed it.

He states it was his custom and it has been the practice to sign bills when presented, whether the house was in session or not. If signed when the house was in session, there was no formality gone through with. The attention of the house was not called to the fact that the speaker was about to sign a bill, nor was the business of the house interrupted for the purpose of signing bills, nor was a member who was speaking interrupted. The facts are that a bill

was simply handed up to the speaker and he would simply sign his name and hand it back.

Affiant states that he is certain that house bill No. 9 when it passed the house contained a *cal*use that it should go into effect January the first, 1897.

And further affiant saith not.

J. H. CARPENTER.

Subscribed and sworn to before me this 6th day of May, 1895.

J. L. REDONDO, [SEAL.]

*Notary Public in and for Yuma County.*

10 Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That for the purpose of fixing the compensation of county officers, the counties of this Territory are hereby divided into the following classes:

First. Counties having an equalized assessed valuation of property of three million dollars or more, shall be counties of the first class.

Second. Counties having an equalized assessed valuation of property of two million five hundred thousand or more and less than three million dollars shall be counties of the second class.

Third. Counties having an equalized assessed valuation of property of two million dollars or more and less than two million five hundred thousand dollars, shall be counties of the third class.

Fourth. Counties having an equalized assessed valuation of property of one million five hundred thousand dollars or more and less than two million dollars shall be counties of the fourth class.

Fifth. Counties having an equalized assessed valuation of property of one million dollars or more and less than one million five hundred thousand dollars, shall be counties of the fifth class.

Sixth. Counties having an equalized assessed valuation of property less than one million dollars shall be counties of the sixth class.

SECTION 2. County officers herein named shall receive a compensation as follows:

First. County treasurer shall receive in counties of the first class a salary of two thousand *tow* hundred dollars; in counties of the second class, a salary of one thousand seven hundred dollars; in counties of the third class a salary of one thousand four hundred dollars; in counties of the fourth class a salary of one thousand two hundred dollars; in counties of the fifth and sixth classes, a salary of one thousand dollars; the foregoing are annual salaries.

Second. District attorneys in counties of the first class shall receive a salary of two thousand dollars per annum; in counties of the second class a salary of seventeen hundred and fifty dollars; in counties of the third class, a salary of fifteen hundred dollars per annum; in counties of the fourth class a salary of one thousand two hundred and fifty dollars per annum; in counties of the fifth class a salary of nine hundred and fifty dollars per annum; in

counties of the sixth class a salary of seven hundred and fifty dollars per annum.

Amend second clause of section 2 by striking out all of said # 1 clause after the word "annum," in the 12th line of the printed bill, and inserting the following, to wit: in counties of the fifth and sixth classes, a salary of one thousand dollars per annum.

Adopted 3, 18.

M. J. NUGENT.

11 Third. County recorders in counties of the first class shall receive a salary of two thousand dollars per annum in counties of the second class a salary of one thousand five hundred dollars per annum; in counties of the third class a salary of one thousand two hundred dollars per annum; in counties of the fourth, fifth and sixth classes a salary of one thousand dollars per annum; in all counties except first-class counties the county recorder shall be *ex officio* clerk of the board of supervisors without extra compensation, and in counties of the second third and fourth classes the board may in their discretion allow recorders a deputy at a monthly compensation not to exceed sixty dollars, provided, that in counties of the first class the county recorders may employ such number of deputies as may be necessary to properly perform the business of their respective offices subject however, to the approval of the board of supervisors, (as to the necessity of a deputy and the number of deputies to be employed).

And provided further that such deputies shall not receive or be paid a salary exceeding seventy-five dollars each per month, payable monthly.

Fourth. An assessor shall be appointed by the board of supervisors whose term of office shall be one year in all first and second class counties; of the third, fourth, fifth and sixth classes, the sheriff shall be *ex officio* assessor.

In first and second class counties the assessor shall receive an annual salary of one thousand eight hundred dollars; in the third and fourth class counties the sheriff shall receive *shall receive* as *ex officio* assessor the sum of six hundred dollars per annum; in fifth and sixth class counties the sheriff shall receive as *ex officio* assessor the sum of five hundred dollars per annum.

Fifth. The probate judge in counties of the first class shall receive an annual salary of fifteen hundred dollars for all services required as probate judge, *ex officio* clerk of the probate court and *ex officio* school superintendent for such service he shall receive in second-class counties an annual salary of twelve hundred dollars; for such service in third, fourth, fifth and sixth class counties he shall receive per annum, the salary of three hundred dollars as school superintendent; as probate judge and clerk of the probate court he shall in addition thereto receive annually the legal fees for services performed and such salary as may be fixed by the board of supervisors of the county not less than three hundred dol-
12 lars and not more than six hundred dollars per annum.

Sixth. Salaries herein established shall be payable quarterly at the latter end of each quarter.

SECTION 3. The equalized assessed valuation fixed during any year shall establish the classification of the county for the succeeding year, beginning January the first and the compensation of officers shall be thus fixed for such succeeding year.

SECTION 4. At the end of each month the recorder must file with the county treasurer an itmized statement under oath of all fees earned by such recorder during said month and turn into the treasurer all monies collected therefor and the recorder shall be liable personally and upon his bond for any fees not collected during such month.

Amend by substituting this in lieu of section four:

At the end of each month the recorder must file with the county treasurer an itemized statement under oath of all fees earned by him during said month past, and he shall then pay over to the treasurer all monies collected therefor, and he shall be liable upon his official bond for any fees not collected. It shall be the duty of the board of supervisors at their quarterly meeting to examine the books of the recorder, and ascertain if he has rendered a correct account of fees collected and of monies received and paid into the treasurer. The salaries enumerated in this bill shall be in full for all services except where otherwise specified.

Adopted.

CHAS. F. HOFF,
*Chief Clerk.*

3, 19, '95.

SECTION 5. All other acts and parts of acts in conflict herewith are hereby repealed.

SECTION 6. This act shall take effect and be in force from and after January first 1897.

The following are the endorsements as they appear upon the bill in their order, viz:

House bill No. 9.—A bill classifying the counties of the Territory and fixing the compensation of county officers therein.

Introduced by Mr. Fish January 28th, 1895; read 1st time; rules suspended; read 2nd time by title; 100 copies ordered printed and referred to committee on judiciary.

Reported printed 2, 5, '95.—Reported by committee amended and recommended that it do pass as amended. Referred to committee of whole with report of committee and its amendments.

2, 7, '95.—Considered in committee of whole, amended, and reported back with recommendation that it do pass as amended.

2, 15, '95.—Amendments adopted and 100 copies ordered printed.

2, 21, '95.—Reported printed and ordered engrossed and to have third reading.

2, 28, '95.—Rep'd engrossed, read 3rd time, placed on final passage, and passed—ayes, 17; noes, 6; absent, Brown, sick.

CHARLES D. REPPY,
*Chief Clerk.*

Council.

Rec'd from house; read first time; rules suspended; read
13 2nd time by title; referred to com. on ways and means
2, 28, '95.—Rep't back that it be referred to a com. of the whole; rep'd adopted and made sp'c'l order for Tuesday, March the 12th, at 2 p. m., 3, 7, '95.

Made sp'c'l order for 4 p. m. this day, 3, 16, '95.

Considered in com. of whole; rep't back; progress, 3, 18, '95.

Considered in committee of the whole; amendment, #1 and #2 offered and adopted. Ordered to have third reading, 3, 19, '95.

Read third time; placed upon its final passage and passed council. Taken to house, 3, 20, '95.

CHARLES F. HOFF,
*Chief Clerk.*

3, 20, '95, house.

Rec'd by message; amended in council; amendments concurred by house; ordered enrolled.

3, 21, '95.—Rep't enr'd and in hands of governor.

CHARLES D. REPPY,
*Chief Clerk.*

TERRITORY OF ARIZONA, } ss:
*County of Pima,* }

Charles F. Hoff, being first duly sworn, on oath states that he is a citizen of the United States and over the age of twenty-one years; that he was and is the chief clerk of the council of the Eighteenth Legislative Assembly of the Territory of Arizona, and as such was a duly qualified chief clerk of said Legislative Assembly, and acted as such during the entire session which terminated at midnight on the 22nd day of March, A. D. 1895; that he has examined and carefully compared house bill No. 9, entitled A bill classifying the counties of the Territory and fixing the compensation of county officers therein, and the endorsements thereon; that upon said bill, in the handwriting of affiant, appears the following:

Council; rec'd from the house; read first time; rules suspended; read 2nd time by title; referred to com. on ways & means, 2, 28, '95; rep't back that it be referred — com. of whole; rep't adopted; made sp'c'l order for Tuesday, March the 12th, at 2 p. m., 3, 7, '95; made sp'c'l order for 4 p. m. this day, 3, 16, '95.

Considered in com. of whole; referred back; progress, 3, 18, '95.

Considered in com. of whole; amendments #1 and #2 offered and adopted; ordered to have a 3rd reading, 3, 18, '95; read 3rd time; placed upon its final passage and passed council; taken to house, 3, 20, '95. Charles F. Hoff, chief clerk.

That the comparison aforesaid was made of the original bill, house bill No. 9, which was brought to the council by Charles D.

Reppy, the chief clerk of the house, and submitted to the council as a bill which had passed the said house as so brought to the council by said Reppy—a copy of the same hereto attached and found in the foregoing pages, with the endorsements thereon—and by such comparison of the said foregoing copy with the said original bill
14 and the endorsements thereon, the said copy of the same and the said endorsements thereon he finds to be correctly copied and to be a true and correct — of said bill with the endorsements thereon; that by the endorsements upon the said bill made by affiant, abbreviated as above set forth, is meant to show and the facts are that the said bill, as appears in aforesaid copy, without the two amendments pasted thereto, with all the words therein set forth, was in that form received from the house as a bill that had passed the house on the 28th day of February, A. D. 1895, an- was on that day read the first time, and thereupon the rules of the council were suspended and the said bill was read a second time by title and was thereupon referred to the committee of the council on ways and means; that on the 7th day of March, 1895, the said bill was reported back from said last-named committee with a recommendation that it be referred to the committee of the whole; that said report was adopted, and that consideration of said bill was by order of the council made a special order in the committee of the whole for Tuesday, March the 12th, at 2 p. m.; that on the 16th day of March, 1895, the said bill was made special order in the committee of the whole at 4 o'clock p. m. of that day; that the same was then considered by the committee of the whole on the 18th of March, 1895, and the committee reported progress and asked leave to sit again upon the bill; that on the 19th day of March, 1895, the bill was again considered in committee of the whole and reported back with amendments # 1 and # 2, which are the two amendments which are now attached to the margin of the original bill, and a copy of the same *are* attached by pasting to the margin of the foregoing copy with a recommendation that the said two amendments be adopted; that on that day the said two amendments were adopted by the council, and the said bill, with the said two amendments, was ordered to have a third reading.

That on the 20th day of March, 1895, the said bill as amended in the two said am*anemd*ts was read a third time and placed upon its final passage in the council and passed the council, with said two amendments; that the foregoing bill is a correct copy, word for word, with the two amendments attached hereto, as pasted on the margin thereof, as the same passed the council, and the said bill, with all of its words therein as aforesaid, was so taken by affiant and reported to the house as the same had passed the council, with the two amendments attached thereto as hereinbefore stated; that in the council section 6, in words — follows, to wit:

"This act shall take effect and be in force from and after January first, 1897," was not stricken out or amended, and that said section was in said bill and a part thereof, as it now appears in the original which I hold in my hand at the time I make this affidavit, was a part of said bill and unamended at the time it passed the

council, and at the time it was by me reported to the house
15 and by me handed to the clerk of the house as having passed the council; that the said bill was not returned thereafter to the council, and no proceedings in the council with reference thereto of any kind or character were had by said council; that the proceedings aforesaid are all entered as above stated in the journal of the council and are a true history of said bill in said council; and further affiant saith not.

CHARLES F. HOFF.

Subscribed and sworn to before me this 26th day of April, 1895.

[SEAL.] JOHN H. MARTIN,
*Notary Public, Pima County, Arizona.*

TERRITORY OF ARIZONA, } ss:
*County of Pima,* }

Charles D. Reppy, being first duly sworn, on oath states that he is a citizen of the United States, over the age of twenty-one years; that he was and is the chief clerk of said house of representatives of the 18th Legislative Assembly of the Territory of Arizona, and as such was the duly qualified chief clerk of said house and acted as such during the entire session after the first three or four days of the said session, which session — at midnight on the 21st day of March, 1895; that he has examined and carefully compared house bill No. 9, entitled "A bill classifying the counties of the Territory and fixing the compensation of county officers therein," and the endorsements thereon with the copy of said bill, and a copy of the endorsements thereon hereto attached and marked on each page thereof Exhibit "A," with my initials on each page thereof made by me.

That the endorsements upon said bill which were made in the house were made under the eye of the affiant and under his direction, and the proceedings were had as of the date they purport to be and correctly state the history of the bill in the house, viz: "Introduced by Mr. Fish Jan. 28th, 1895; read first time; rules suspended; read 2nd time by title; 100 copies ordered printed and referred to committee of judiciary; reported printed.

2, 5, '95.—Reported by committee amended and recommended that it do pass as amended. Referred to committee of whole with report of committee and its amendments.

2, 7, '95.—Considered in committee of whole, amended; and reported back with recommendation that it do pass as amended.

2, 15, '95.—Amendments adopted and 100 copies ordered printed.

2, 21, '95.—Reported printed and ordered engrossed and to have third reading."

That the foregoing endorsements are the endorsements which were placed upon the original bill introduced by Mr. Fish in the house and upon the first bill, both of which I have now before me, and the endorsements are correctly transcribed and they truthfully set forth the history of that bill up to this time, viz, February the

21st, 1895, when the bill was engrossed and the engrossed
16 bill thereby became the original bill, and the foregoing endorsements were transferred to it as aforesaid, when the following endorsements were put upon the said engrossed bill, which had become the original bill, in the handwriting or by direction of affiant, viz:

"2, 28, '95.—Rep'd engrossed, read 3rd time, placed on final passage, and passed—ayes 17, noes 16. Absent: Brown, sick. Charles D. Reppy, chief clerk." And the said last endorsements are true and correct and truthfully state the history of said bill up to and after the passage of the bill by the house, when affiant delivered the said bill to the council.

That at that time said bill was delivered to the council the Exhibit "A" hereto attached is a true and correct copy of the bill as the same passed the house without the amendments attached thereto in the council, which appear pasted on the margin of said copy; that the bill as it passed the house and as delivered to the council had section 6, in the words following:

"SECTION 6. This act shall take effect and be in force from and after January the first, 1897." That thereafter, on the 20th day of March, 1895, the said bill was returned to the house from the council and there was attached to the same two riders as amendments pasted on the margin of Exhibit "S," hereto attached, and in the words and figures as they appear in the two riders attached to the bill, and that those two riders and amendments were the only riders, amendments, changes, or alterations made or proposed to be made in the council.

Whereupon the following endorsements were made upon said bill in the handwriting or by direction of affiant, to wit:

"3, 20, '95, house.—Rec'd by message; amended in council; amendments concurred in by house; ordered enrolled.

2, 21, '95.—Rep'd enr'd and in hands of governor. Charles D. Reppy, chief clerk."

That said endorsements in the house after the bill was returned from the council correctly states the action of the house thereon and all of the action of the house thereon.

That at the time said bill was sent to the committee on enrollment section 6, "This act shall take effect and be in force from and after January the first, 1897," was in said bill exactly as it appears in Exhibit "A," hereto attached, and after said bill was returned to affiant from said committee and reported to have been enrolled and placed in the hands of the governor, as aforesaid, said section 6 in the words and figures aforesaid was in said bill as it now appears in said bill, the original of which I now hold in my hand at the time I execute this affidavit, and which I have carefully compared as to the bill itself and the endorsements thereon with Exhibit "A," hereto attached, and I find Exhibit "A" to be an exact and correct copy of said Exhibit "A" which I now hold in my hand.

17 Affiant further states that he holds in his hand the original house bill No. 9 as it was introduced for the first time in the house by Mr. Fish, and said original bill had and has said

section 6 in the same words aforesaid and continued in said bill until said original bill introduced by Mr. Fish aforesaid was engrossed the first time as amended, and that none of the amendments of the bill struck out, changed, or altered section 6 of said bill as aforesaid, and I also have in my hand the first engrossed bill which included the amendments which had before then been adopted, and said first engrossed bill had then and has now, as I see by inspection, section 6 therein in the language aforesaid and unchanged, so that I am able to swear that said house bill No. 9 in its whole history in said house from the beginning to the end contained said section 6 in the words aforesaid unchanged and unamended; and affiant therefore swears that said section 6 in the words aforesaid were omitted from the enrolled bill which was handed to the governor while in the hands of the committee on enrollment and after the bill had finally passed through both Houses of said Legislative Assembly.

And further affiant saith not.

CHARLES D. REPPY.

Subscribed and sworn to before me this 29th day of April, 1895.

FLETCHER M. DOAN,
*Notary Public, Pinal County, Arizona.* [SEAL.]

And the court, having heard the argument of counsel, finds the issues for the plaintiff and renders judgment accordingly.

And immediately thereupon defendant made his motion for a new trial upon the following grounds:

1st. That the evidence does not sustain the judgment.

2nd. The court erred in holding that the law filed with the secretary of the Territory and signed by the president of the council and speaker of the house was conclusive evidence of the fact that the bill had become a law, and in holding that other evidence could not be introduced to show that the bill signed by the governor and presiding officers aforesaid had not passed either house of the General Assembly.

And the court, having considered said motion, overruled the same, and the defendant then and there instantly excepted and in open court gave notice of appeal to the supreme court and asked that the same be entered upon the minutes of the court, and it was done accordingly.

And, inasmuch as the foregoing do not appear of record in said cause, this statement of facts and bill of exceptions is hereby
18 signed by the court, by the consent of the attorney for plaintiff, and ordered to be made part of the record in this case.

Dated this 14th day of June, A. D. 1895.

J. D. BETHUNE,
*Judge of said District Court.*

Endorsed: No. 1868. Bill of exceptions and statement of facts. Filed June 14th, 1895. Scott White, clerk, by A. H. Emanuel, deputy clerk.

*Assignment of Errors.*

And thereafter and on July 2nd, 1895, defendant filed his assignment of errors herein in words and figures following, to wit:

And now comes the defendant, by Barnes & Martin, his attorneys, and alleges that there are manifest errors in the records and proceedings in this cause, in that:

First. The court erred in refusing to grant a new trial as asked for by the defendant on the grounds contained in the motion on file and in overruling the same.

Second. The court erred in rendering judgment for the plaintiff in the cause, for the reason that the evidence in the cause does not sustain a judgment for the plaintiff.

The evidence in the case showed conclusively that the bill referred to in the agreed state of facts passed the house and passed the council containing sections 6 and 7 as said sections appear in the copy of the bill attached to the agreed state of facts, and that the bill never did pass the house or council with those two sections stricken out; and the evidence shows conclusively that after the bill had passed both houses, containing a clause or section that the bill should take effect and be in force from and after January first, 1897, and that the bill as enrolled, signed by the president of the council and speaker of the house, and presented to the governor and signed by him, did not contain that section, and hence is not the bill that passed both houses, and because the evidence shows conclusively that the enrolled bill as signed by the governor and said two presiding officers is not a law, and hence the judgment of the court from the evidence should have been for the defendant, and the court erred in not rendering judgment for defendant accordingly.

Third. The court erred in holding that a bill filed with the secretary of the Territory and signed by the governor, presi-
19 dent of the council, and speaker of the house is a law, whatever evidence may be offered to the contrary notwithstanding. The court therefore erred in holding that such authentication of a law is conclusive, and that no evidence can be considered by the court to show that such act was never enacted, and that it is not a law.

Fourth. The court erred in holding that it was not competent for the court to look into the journals of the house and council of the Legislative Assembly and to consider the original bill as introduced into the house and the original endorsements thereon by the clerk, the engrossed copy of said bill in the house and the original endorsements thereon made by the clerk of the house, and the second engrossed bill in the house and the original endorsements thereon by the clerk of said house, and the endorsements thereon by the clerk of the council and the endorsements on the same after they were returned to the house, as evidence of the question whether the bill as finally signed had passed either house and Legislative Assembly.

Fifth. The court erred in holding that the court could not consider the certificates of the clerk of the council and the clerk of the house as appears by their affidavits attached to the stipulation of evidence on file and agreed to be considered if the evidence in any form was competent.

Sixth. For the foregoing reasons the court erred in not rendering a judgment upon the evidence in favor of defendant.

Defendant therefore prays that the cause be reversed.

BARNES & MARTIN,
*Attorneys for Defendant.*

Endorsed: Filed July 2nd, 1895. Scott White, clerk, by A. H. Emanuel, dept. clerk.

And thereupon, on the 3rd day of July, the appellant filed his bond on appeal as follows:

Know all men by these presents that *we*, W. A. Harwood, of the county of Cochise aforesaid, as principal, and we, Paul B. Warnekros, of the same place, by occupation a merchant, and Martin Costello, of the same place, by occupation a merchant, as sureties, are held and firmly bound unto A. Wentworth, the respondent above named, in the full and just sum of one hundred dollars, lawful money of the United States; for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 3rd day of July, 1895.

Whereas the appellant above named is desirous of appealing to our supreme court from the judgment of the court made herein against him: Now, therefore, the condition of the above obligation is such that the said appellant shall prosecute his said appeal with effect and shall pay all the costs which have accrued in this court and which may accrue in the appellate court.

W. A. HARWOOD. [SEAL.]
PAUL B. WARNEKROS. [SEAL.]
MARTIN COSTELLO. [SEAL.]

TERRITORY OF ARIZONA, } ss:
*County of Cochise,* }

P. B. Warnekros and Martin Costello, the sureties whose names are subscribed to the foregoing bond, being by me first duly sworn, each for himself and not one for the other upon his oath says: I am a householder and resident of said county and Territory; that I am worth the amount for which I have signed the said bond over and above my just debts and liabilities, exclusive of property exempt from execution.

PAUL B. WARNEKROS.
MARTIN COSTELLO.

Subscribed and sworn to before me this 3rd day of July, 1895.

SCOTT WHITE, *Clerk,*
By A. H. EMANUEL, *Dept. Clerk.*

I have fixed the probable amount of costs of the suit of both the appellate court and the court below at fifty dollars and approve the foregoing bond this 3rd day of July, 1895.

SCOTT WHITE, *Clerk*,
By A. H. EMANUEL, *Dept. Clerk*.

Endorsed: Filed July 3rd, 1895. Scott White, clerk, by A. H. Emanuel, dept. clerk.

21 *Certificate.*

TERRITORY OF ARIZONA, } ss:
*County of Cochise*, }

I, Scott White, clerk of the district court of the first judicial district of the Territory of Arizona in and for the county of Cochise, do hereby certify that the foregoing 18 pages of typewritten matter *is* a full, true, and correct copy of the petition for writ of mandamus, affidavit for writ of mandamus, order for writ of mandamus, defendant's answer, minute entries, motion for new trial and order overruling same, statement of facts and bill of exceptions, assignment of errors, and bond on appeal, as was demanded by the appellant of the proceedings had in said district court in the case entitled A. Wentworth, plaintiff, *vs.* W. A. Harwood, defendant, except where the venue of the court, title of the cause, and signatures thereto were omitted as per rules of the supreme court.

I also certify that said court adjourned *sine die* June 15th, 1895.

[SEAL.] Given under my hand and the seal of said district court this 3rd day of July, A. D. 1895.

SCOTT WHITE, *Clerk*,
By A. H. EMANUEL, *Dept. Clerk*.

Transcript demanded June 28th, 1895, and delivered to attorneys for defendant July 5th, 1895.

SCOTT WHITE, *Clerk*,
[SEAL.] By A. H. EMANUEL, *Dept. Clerk*.

Endorsed: No. 485. Filed July 8th, 1895. J. L. B. Alexander, clerk.

22 In the Supreme Court, Territory of Arizona.

A. WENTWORTH, Plaintiff and Appellee, }
*vs.*
W. A. HARWOOD, Defendant and Appellant. }

It is hereby stipulated by and between the parties hereto that this cause shall be submitted to the supreme court, at Prescott, at the July term thereof, upon briefs to be hereafter filed.

Dated July 5th, 1895.

GEO. W. SWAIN,
*Attorney for Appellee.*
BARNES & MARTIN,
*Attorneys for Appellant.*

(Endorsed:) No. 485. Filed July 10, 1895. J. L. B. Alexander, clerk.

In the Supreme Court of the Territory of Arizona.

Be it remembered that on the 8th day of July, 1895, being one of the days of the July term, 1895, of said court, the following proceedings were had, to wit:

W. A. HARWOOD, Appellant,
*vs.*
A. WENTWORTH, Appellee.

It is ordered that this cause be set for hearing Wednesday, July 10th, 1895.

Be it further remembered that on the 10th day of July, being one of the days of the July term, 1895, of said court, the following proceedings were had, to wit:

W. A. HARWOOD, Appellant,
*vs.*
A. WENTWORTH, Appellee.

23 On motion of attorney for the appellant herein the consideration of this cause is ordered passed until the afternoon session of the court.

W. A. HARWOOD, Appellant,
*vs.*
A. WENTWORTH, Appellee.

This cause came on regularly for hearing. Mr. W. H. Barnes argued for the appellant herein, and Mr. Wiley E. Jones, district attorney of Graham county, as a friend of the court, for the appellee herein; whereupon the cause was submitted and ordered that appellee herein be granted 15 days from this date to file his brief herein, and, on motions of Mr. Jones and Jos. H. Kibbey, it was ordered they be granted 15 days respectively to file briefs in this cause in behalf of appellee herein as friends of the court.

Be it further remembered that on the 11th day of July, 1895, being one of the days of the July term, 1895, of said court, the following proceedings were had, to wit:

W. A. HARWOOD, Appellant,
*vs.*
A. WENTWORTH, Appellee.

In this cause it is stipulated in open court on this day between Mr. W. H. Barnes, counsel for the appellant herein, and Mr. Wiley E. Jones and Jos. H. Kibbey, appearing for the appellee herein and as friends of the court by permission of the court, that the judgment of the court in this cause may be rendered in vacation and entered as of the present term of the court.

And be it further remembered that on the 1st day of August, 1895, being one of the days of the July term, 1895, of said court, the following proceedings were had, to wit:

W. A. HARWOOD, Appellant,
*vs.*
A. WENTWORTH, Appellee.

This cause having been heretofore submitted and by the court taken under consideration, and the court having fully considered the same and being fully advised in the premises, it is ordered that the judgment of the lower court rendered in this cause be, and the same is hereby, affirmed; and it is further ordered, adjudged, and decreed that the appellee herein do have and recover of and from the appellant herein and Paul B. Warnekros and Martin Castello, the sureties on the appeal bond herein, his costs incurred in
24 the lower court in this cause and the sum of fourteen and $\frac{50}{100}$ dollars, his costs in this court.

W. A. HARWOOD, Appellant,
*vs.*
A. WENTWORTH, Appellee.

The appellant now in open court prays an appeal to the Supreme Court of the United States on the ground that there is drawn in question in this case the validity of a statute and an authority exercised under the United States; and it appearing that the validity of an act of the Legislative Assembly of Arizona is involved herein and the question whether the Legislative Assembly of Arizona has obeyed the laws of Congress and whether an act of the legislature is not void as not enacted as required by law and violates acts of Congress governing the Legislative Assembly of Arizona, and it appearing to the court that those questions are involved, therefore the prayer of appellant is allowed and an appeal allowed from this court to the Supreme Court of the United States in this cause upon appellant executing bond for costs in the penal sum of one thousand dollars within thirty days from this date, to be approved by the clerk of this court.

25 In the Supreme Court, Territory of Arizona.

A. WENTWORTH, Plaintiff and Appellee,
*vs.*
W. A. HARWOOD, Defendant and Appellant.
Bond on Appeal.

Know all men by these presents that we, W. A. Harwood, principal, and J. V. Vickers and P. B. Warnekros, residents of Cochise county, Arizona Territory, as sureties, are held and firmly bound unto A. Wentworth in the penal sum of one thousand dollars, lawful money of the United States of America, to be paid to the appellee, and for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, and assigns, firmly by these presents.

Sealed with our seals and dated this 10th day of August, A. 1895.

Whereas the above-named W. A. Harwood having taken an appeal to the Supreme Court of the United States and the same having been allowed from a final judgment rendered against him in favor of A. Wentworth in the supreme court of the Territory of Arizona to reverse the judgment rendered in said court;

Now, therefore, the condition of this obligation is such that if the above-named W. A. Harwood shall prosecute his said appeal with effect and if he fails to make his plea good shall answer all costs, then this obligation shall be void; otherwise to remain in full force and effect.

W. A. HARWOOD. [SEAL.]
J. V. VICKERS. [SEAL.]
P. B. WARNEKROS. [SEAL.]

UNITED STATES OF AMERICA, }
*Territory of Arizona, County of Cochise,* } ss:

J. V. Vickers and P. B. Warnekros, being severally duly sworn, for himself on oath deposes and says that he is a resident and freeholder or householder within the Territory of Arizona; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities and exclusive of property exempt from execution.

J. V. VICKERS.
P. B. WARNEKROS.

Subscribed and sworn to before me this 10th day of August, A. D. 1895.

FRED. CASTLE,
*Notary Public.*

[SEAL.]

The within bond is hereby proven this 15th day of August, A. D. 1895.

J. L. B. ALEXANDER,
*Supreme Court Clerk.*

Endorsed: No. 485. Appeal bond to U. S. Supreme Court. Lodged with me this 15th day of August, A. D. 1895. J. L. B. Alexander, clerk.

26 In the Supreme Court of the United States of America, October Term, A. D. 1895.

A. WENTWORTH, Appellee,
*vs.*
WILLIAM A. HARWOOD, Appellant.

*Assignment of Errors.*

And now comes the appellant, William A. Harwood, by William H. Barnes, his attorney, and alleges that there are manifest errors in the record and proceedings in the supreme court of the Territory of Arizona, as follows:

I.

The supreme court of Arizona erred in affirming the judgment of the district court.

II.

The said court erred in refusing to sustain the errors of the district court assigned in said court.

III.

The said court erred in refusing to reverse the said cause for the errors of the district court assigned.

IV.

The said court erred in holding the act of the Legislative Assembly entitled "An act classifying the counties of the Territory and fixing the compensation of county officers therein" to be a valid law, for the reason that the said act did not pass the said Legislative Assembly as required by the laws of Congress and for the reason that the said act is local and special legislation, and hence prohibited by the laws of Congress, and the said court erred in not so deciding.

Appellant therefore prays that the judgment of the said supreme court of Arizona be reversed.

By WM. H. BARNES,
*Attorney for Appellant.*

Endorsed: In the supreme court. A. Wentworth, appellee, *vs.* Wm. A. Harwood, appellant. Assignment of errors. Lodged with me this 26th day of August, 1895. J. L. B. Alexander, clerk.

27 UNITED STATES OF AMERICA,
*Territory of Arizona.*

I, J. L. B. Alexander, clerk of the supreme court of the Territory of Arizona, do hereby certify the above and foregoing to be a full, true, and correct transcript and copy of the records and proceedings

in the cause entitled W. A. Harwood, appellant, against A. Wentworth, appellee, as the same appears of record in my office; also that no opinion has been filed in said cause by said supreme court at this date.

In witness whereof I have hereunto set my hand and affixed the official seal of said supreme court of Arizona Territory this 16th day of September, A. D. 1895, at Phœnix, the capital of Arizona Territory.

[Seal Supreme Court of Arizona.]

J. L. B. ALEXANDER,
*Clerk Supreme Court of Arizona Territory.*

Endorsed on cover: Case No. 16,046. Arizona T'y supreme court. Term No., 756. W. A. Harwood, appellant, *vs.* A. Wentworth. Filed September 30, 1895.

Supreme Court, U. S.
FILED
FEB 28 1896
JAMES H. McKENNEY,

# BRIEF OF APPELLANT.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 756.

W. A. HARWOOD, APPELLANT,

*vs.*

A. WENTWORTH, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED FEBRUARY 28th, 1896.

(16,046.)

Barnes'

(16,046.)

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 756.

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W. A. HARWOOD, APPELLANT,

*vs.*

A. WENTWORTH, APPELLEE.

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APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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## BRIEF OF APPELLANT.

This case raises the question of the validity of the Act No. 51 on page 68 of the published laws of Arizona for 1895.

The history of that act, as appears by the original bills, the endorsements thereon, and the journals of both houses, is as follows:

The bill was introduced in the house by Mr. Fish January 28th, 1895, and endorsed "House Bill No. 9." As introduced, the bill has six sections, the latter of which is as follows: This act shall take effect and be in force from and after January first, 1897.

The bill took the ordinary course through the committees; some amendments were adopted, but not as to section 6.

It was printed as introduced, and again printed as amended, and both printed bills show section 6.

February 15th, 1895, it was ordered engrossed for a third reading. The bill was reported engrossed, and the engrossed bill contains section 6 unchanged. On that day it was engrossed again, read a third time, and passed the house, 17 ayes, 6 noes. As it passed the house, section 6 was in the bill.

On the same day the bill was received by the council.

In the council two amendments were adopted, one to section 2 and the other to section 4, but section 6 was neither amended nor stricken out, and the bill passed the council March 19th, 1895, with section 6 in the bill. It was returned to the house the same day with the two amendments as riders, and no other, and these amendments were concurred in, and the bill as amended in the council passed the house with section 6 in the bill.

The bill was ordered enrolled, and on March 21st, 1895, the bill with section 6 in the bill was reported enrolled and in the hands of the governor.

The enrolled bill appears signed by the president of the council and speaker of the house and approved by the governor March 21st, 1895, same day, and has been on file with the secretary. This latter bill does not contain sections 5 and 6. These sections were stricken out after the bill passed both houses. They were omitted from the enrolled bill in copying the engrossed bill. The report to the house that the bill was enrolled and in hands of the governor gave notice to the house that the bill as passed with those two sections in it was in the hands of the governor.

Doran and Carpenter both say that it is not the practice and never has been for the presiding officer in signing a bill to call the attention of the house to the fact that a bill is about to be signed, or to interrupt the proceedings. That bills are signed as it happens, whether in session or otherwise, and that they do not compare or verify the enrolled bill. That the act of signing is merely pro-forma, as a matter of fact. That they did not compare this bill or look at it.

From this history it appears that the bill signed by the governor did not pass either house, was not before either house, was not read three times in either house, was not voted for by a majority of a quorum in either house, and the votes, ayes and noes, was not recorded upon the bill in either house.

The law-making power of this territory is vested in the governor and legislative assembly. The latter shall consist of a council and house of representatives. *R. S. U. S., sec. 1846.* Every bill which shall have passed the legislative council and house of representatives shall before it becomes a law be presented to the governor. *Sup. 1881, p. 230.*

The secretary shall record and preserve all the laws and proceedings of the legislative assembly. These provisions differ from the constitution of the United States as to congress. *Sub. 2, sec. VII art. 1, and sec. I art. 1 and sub. 3, sec. V and art. 1* are referred to.

The latter requires each house to keep a journal and to

record the ayes and noes. The laws of Arizona, however, enact that requirement. *Sec. 2895 and 2899.* Every bill shall be presented to the governor before it becomes a law. *Sec. 2901.*

Every bill shall be read three times in each house before the final passage thereof. No bill shall become a law without the concurrence of a majority of a quorum. On final passage the vote shall be by ayes and nays and entered on the journal. *Sec. 2928.*

The original acts of the legislature shall be deposited and kept by the secretary. The laws of Arizona have as high effect as joint rules, if not more, and must guide in the passage and authentication of laws.

The court takes judicial notice of the procedure in the passage of laws. It is a question of law purely for the court and not an issue of fact for a jury whether a bill has become and is a law. *Sutherland on Stat. Const., sections 52, 53 and 54, and cases cited.*

Bradley, J., in *Ottawa vs. Perkins, 94 U. S., 260,* says: "In our judgment it was not necessary to have raised an issue on the subject except by demurrer. The court is bound to know the law without taking the advice of a jury on the subject."

"The investigation upon an objection that an act was unconstitutionally passed may be expected to be made primarily by the parties." *Sutherland, supra.*

"The court is required to take notice ex-officio of general laws. Its peculiar function is to determine what the law is and expound it." *Ib.*

"It is more logical and more consistent with principle, to treat the evidence, so called, produced upon such an objection as being presented for the information of the court in the same sense in which law books are read. Facts are only incidental to the research, as when a court must deal with them to some extent to learn if authorities cited are authentic."

"In *Gardner vs. Collector, 6 Wall., 508,* Miller, J., said of the public statute in question: It is one of which the court takes judicial notice without proof. We are of the opinion, therefore, as well as authority, that whenever a question arises in a court of law of the existence of a statute, or of the time when a statute took effect, or of the precise terms of the statute, the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such questions, always seeking first for that which in its nature is most appropriate, un-

less the positive law has enacted a different rule." *Cooley's Consti. Law, 135,* upholds the same view.

Sedgwick (55) says: "It is settled that the judges may, and if they deem it necessary should, look beyond the statute book and examine the original engrossed bills on file in the office of the secretary of state, and it seems that the journals kept by the two houses may also be consulted."

It would be idle pedantry to cite the cases upon which these great judges and authors base their conclusions. We have examined them so far as our facilities have permitted, and we find them fully sustained. We have accordingly brought the facts before the court as appears in the agreed statement of facts and the original engrossed bills with the endorsements thereon, and these are verified by the journals of the two houses.

From a consideration of these facts the undisputed conclusion is reached that as a matter of fact a bill passed both houses and that that bill was not presented to the governor or signed by the presiding officers of the two houses, but that an entirely different bill and one that had never passed either house at all was presented and signed. Two important sections as the bill passed were not in the bill. One enacts that "all acts and parts of acts in conflict herewith are hereby repealed." The other, "This act shall take effect and be in force from and after January first, 1897."

The whole force and effect of the bill was taken out of it after it passed both houses. This made the bill change salaries of a large number of the county officers during their term of office and wiped out the offices of assessor and clerk of the board of supervisors in a number of counties during the term of the incumbents.

The legislature by a bill which passed both houses, and as it passed, provided that the bill should not affect incumbents, but their successors. One was equitable, the other inequitable. One was enacted; the other was rejected. A bill, before it becomes a law, must have passed both houses of the assembly. Without having so passed it cannot be a law. The power to make a law is vested, not in the governor, but in the governor and assembly. *U. S. R. S., 1846.*

This is not a question whether constitutional requirements as to the procedure to be observed in the passage of bills has been followed; whether the votes of a quorum as required by the organic act; whether ayes and noes have been entered in the journal; or whether the bill has been read three times or not. That is not the kind of question which is presented. Volumes of the text writers and scores

of decisions are found discussing these questions. They discuss the weight to be given to journals against authentication, and authentication against journals. Except by analogy these do not help us here. The facts are, the court must find, and there is no dispute of it that this law never has received the assent of either branch of one of the law making powers, and the most important, namely, the assembly.

Without such assent it is not a law at all. It is as what purported to be a law were found deposited with the secretary, signed by the governor and the presiding officers of the two houses, and the court knew (for the court does know as a matter of law) that no such bill had been before or considered or voted on by either house.

In that case the court would be bound to say this is not a law. To say otherwise is to say that the governor alone may make laws. To say otherwise is to say, "The organic act has been violated; one branch of the law making power has not acted on this, yet it is a law."

It is for the court to declare that to be true which it knows judicially and as an undisputed matter of fact to be false. Nothing would seem to be more absurd. Courts are not required to adjudicate and solemnly pronounce such folly. It is not the law. It is not sustained by the highest authority. The great text writers cited above, Cooley, Sutherland, Sedgwick and Dwarris, after reviewing all the authorities, come to this conclusion. The bill signed by the presiding officers, to be valid, must be the bill actually passed by the legislature. *23 Ency. Law, 176, and cases cited.*

Again, on page 185, that work says: "The bill approved must be that passed. A change made after the passage and before the approval, invalidates the act in those states where the enrollment is not conclusive." See cases cited.

We do not say that this doctrine has not been disputed, but we insist that it is based upon the better reason and the greater weight of authority. True, it has been held that the enrolled bill, signed by the presiding officers, approved by the governor and deposited with the secretary, cannot be disputed by any evidence. This conflict of authority is cited by all of the above works and the cases considered. The position we contend for is sustained by the supreme courts of Alabama, Arkansas, Colorado, Dakota, Florida, Illinois, Kansas, Kentucky, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, Ohio, Oregon, South Carolina, Tennessee and vermont, eighteen in number. The courts of California, Indiana, Iowa, Missouri, New York, Pennsylvanio and Texas have cases each way. The courts of Con-

necticut, Louisiana, Maine, Mississippi, Nevada, New Jersey, North Carolina and Washington, eight in number, hold the enrolled bill to be conclusive and to be disputed by no evidence whatever.

The cases are cited in government's brief in a note to *Field vs. Clark, 143 U. S., 661.* Of the vast number of cases we shall call attention to a few.

Answer of the judges by a question of legislature, reported in *52 N. H., 622,* and *35 N. H., 579,* are among the best considered and best reasoned cases. They are cited in full in note to *Osborne vs. Staley, 13 Am. Reports, 648.* The whole note is worthy of careful reading, as well as the opinion in the case itself. *Berry vs. R. Co. (41 Md., 446,) 20 Am. Rep. 69,* is on all fours with this case.

And the whole discussion and review of authorities is very full and very able.

"In the case now before us it is plainly shown by the most unquestionable evidence that the third section of the bill as engrossed and as it actually passed is essentially different from the bill that was attested, sealed, signed by the governor and filed for record. There is, therefore, no ground for presumption in favor of the identity of the bill as recorded in the office of this court with that which passed the legislature, unless we make the facts of the attestation, etc., conclusive upon the question as to what is law, and exclude all other evidence upon the subject, no matter how plain and direct it may be.

"Suppose, for instance, it could be plainly shown by competent evidence for the purpose, that a particular bill alleged to have been passed by the legislature had never been put to a final vote, or that it had been declared passed without previous readings and in total disregard of the express mandatory requirements of the constitution as to the manner in which a bill can be enacted into a law, could it be successfully maintained that such alleged act should be enforced as law?

"We suppose not, and if not in such a case, *afortiori* should it not be enforced as law when it is plainly made to appear that it has never been before the legislature at all?"

That is the case at bar. The bill signed by the presiding officers and by the governor was never before the legislature, or either house. Was never voted on. Was never considered.

That court adds: "With but two exceptions it has been held that neither the printed statute book nor the ordinary authentication of the statute after its passage would preclude the inquiry into the fact whether the statute as published

had in truth passed the legislature, and as evidence upon the question the legislative journals and the bills as acted upon by the legislative assembly have been consulted."

We add, to hold otherwise is to hold appearance more important than reality, authentication of higher solemnity than the thing, the certificate as more than the fact certified, shadow more than substance, the stone statue more than the hero sought to be immortalized.

It is not a question of weight between journals and authentication by officers. This has been the theme of most of the argument, and here is to be found the fallacy in the discussion against our view. If authentication says one thing and the mere matter of journal entries another, if it be authentication against silence of journals, that is one thing; but here is the question of authentication against admitted and undisputed facts. Shall a false certificate stand against the truth? No doubt authentication is *prima facie*. It can be overcome only by clear and conclusive evidence. But when it is overcome and shown to be affirmatively false, admitted to be false, undoubtedly false, then authentication should fall.

The leading case in the Supreme Court of the United States is *Gardner vs. Collector, supra.* That case holds that the court takes judicial notice of the public statutes and the proceedings leading up to their enactment and authentication. And that the judges inform themselves from the best sources available. This case is cited with approval in *Purdy vs. People, 4 Hill, 384; DeBow vs. People, 1 Den., 9; Spangler vs. Jacoby, 14 Ill., 297; Young vs. Thompson, 14 Ill., 380; Speer vs. Plank R. Co., 22 Pa., 376; Matter vs. Welman, 20 Vt., 656; Supervisors vs. Heenan, 2 Minn., 330; Fowler vs. Pierce, 2 Cal., 165.*

The leading case was cited with approval in the well considered case of *Osborn vs. Staley, supra*, as an authority that the court may go into the journals and proceedings to see if the Act became a law at all; and also in *Berry vs. R. Co., supra.* The case was approved in *Papeyre vs. U. S., 17 Wall., 191, (Law. Ed. Vol. 21, 610).* Again in *Ottawa vs. Perkins, 94 U. S., 260. (Law Ed. 21, 158).*

In *Walnut vs. Wade, U. S., 697,* the court says the question is settled.

In *Bank vs. Ottawa, 105 U. S. 667,* we find these words of the remark of the court in *R. Co. vs. Wren, 43 Ill., 79:*

"We are not aware of any law which makes the printed journal evidence of the contents of the original, than they were but *obiter dictum* and in conflict with the general current of decisions in that court and in this." *See 92 N. Y., 139.*

In *Jones vs. U. S., 137 U. S., 216,* this case is approved in these words:

"Upon the question of the existence of a public statute or of the date when it took effect, they may consult the original roll or other official records."

In the case of *Re. Duncan, 139 U. S., 456,* the court again says:

"The question as to the existence of a law is a judicial one and must be so regarded by the courts of the United States."

And fully sustains *Gardner vs. Collector* and holds that a statute duly certified is presumed to have been duly passed *until the contrary appears.* The case cites with approval *Jones vs. U. S., Supra.*

These are all the cases down to *Field vs. Clark, 143 U. S., 649.* In that case the celebrated "McKinley bill" was before the court. There were grave partisan, political questions involved. Party lines had been drawn on the bill. Most intense feeling had been aroused throughout the whole country. The heaviest financial interests were involved. Profound reasons of public policy pressed upon the court. The case is put upon this ground in the main, but it retains a saving clause in these words:

"When the question properly arises the judicial departments will enquire whether an act so authenticated is in conformity with the constitution."

The opinion on page 672 lays great stress on the fact that the signing by the speaker of the house and president of the senate was in open session, and so an official attestation by the two houses of the bill as one that has passed congress.

Whatever weight, and the court (*Field vs. Clark*) seems to lay great weight upon it, is to be given to the signatures of the presiding officers in the presence of the houses in open session, that weight is destroyed by the fact which appears in this case, that it is not the practice in Arizona and never has been, and was not true as to this bill, and no inference of approval by the house can be drawn by the fact of signature here. The case in argument goes far to close the door.

We urge that this case is against the weight of authority and contrary to the former decisions of this court. It does not overrule *Gardner vs. Collector* or the former cases, and it particularly cites that case with approval.

If the case stood alone it would be authority for the startling doctrine that no matter how, whether by fraud or mistake, a law is so authenticated, though it never passed

the legislature, yet it must stand and the courts be powerless. It does, however, leave open the inquiry whether the law so authenticated has been enacted in conformity with the constitution. To us it leaves open the question whether the law has been enacted in conformity with our organic act, and we have shown that this was not so enacted.

The question again came before the court in *Lyons vs. U. S., 153 U. S., 663.* The validity of a law of New Mexico was involved. The legality of the organization of the council was the question, and while the court quotes *Field vs. Clark* approvingly, they say:

"Perhaps, however, it would be proper to extend our examination somewhat further. The question whether a seeming act of the legislature has become a law in accordance with the fundamental law is a judicial one to be tested by the courts and judges and not a question of fact to be tried by a jury."

Citing *Ottawa vs. Perkins, Post vs. Supervssors, Gardner vs. Collector,* and quotes the language of the last case. It thereby reaffirms it and cites *Duncan vs. Jones.* The court then in a long opinion goes into the whole case, the journals and intrinsic facts and holds to the validity of the law.

But the court expressly declines to decide under what circumstances they would be compelled to decide that an enactment was by an illegal body. Such a question may arise. They cite with approval *Cluff vs. Curtis, 134 U. S., 361.* It seems that this last decision intentionally leaves the question an open one, to be settled by the facts of each case.

The Supreme Court of the United States is therefore on both sides of the question. The weight and number of the cases in this court upholds the view we contend for and the court has never discarded it.

We insist that *Lyons vs. Woods* clearly indicates that the court went too far in *Field vs. Clark.* They clearly intimate that cases may arise when a law must be declared void, even though authenticated.

If there ever can be such a case, the case at bar is that case. None stronger can be found, and we have no doubt in the light of the cases in this court that this law will be declared void upon the authorities of the Supreme Court of the United States alone. When we throw in the almost overwhelming weight of the authority from the other courts, we confidently say this is not a law. *People vs. Dunn, 80 Cal. 213.*

This is not a question as to whether this law was read three times in each house, as required by statute, nor as to whether the law received a concurrence of a majority of

quorum; nor whether on final passage the votes were by ayes and nays, entered on the journal.

No such question as that is presented. Those are facts which the journals will disclose, and it is with reference to constitutional questions of that kind that the question arises as to which is to have the greater weight, the signed bill with the secretary or the journals of the houses as a question of evidence. It is at this point that the authorities differ. Some say the former is conclusive, others say not so; but that the court will look into the journals and proceedings to see whether the constitution has been obeyed. The question here goes farther than that. The facts show that this bill was never before either house at all. Was never passed by either house; but after a bill had passed both houses, an entirely different bill was made up by some clerk of a committee and handed to the governor to sign. The bill handed to the governor is not an enrolled copy of the bill which passed the house, and hence the bill never passed at all. Here is the question presented, and here is the issue. I do not claim for the agreed case anything more than bringing to the actual knowledge and attention of the court facts of which the court takes judicial knowledge. If the authenticated bill is conclusive the court will look no further. If not, then here are the facts under the eyes of the court to be examined and determined.

The doctrine that frand and forgery in legislation must prevail and that the courts are powerless to see what is stalking like a monster before their eyes because they are prohibited from looking at it, has met with significant and able protest from laymen and lawyers.

The Denver *Republican*, January 15th, 1894, points out that many laws are wilfully changed in the process of enrollment, and asserts that it may be done by any rogue.

The *American Law Review*, Vol. 29, p. 734, ane Vol. 30, p. 115, in two very able articles reviews *Carr vs. Coke, 22 S. E. (N. C.), p. 16.* I ask a careful reading of those two articles, as they, far abler than I can do, present this question. They cite and comment on the cases. They conclude that it is a question of *evidence.* That the presumption is in favor of the validity of a law authenticated by the governor and presiding officers of the houses. That the presumption must be overturned by clear and convincing *evidence.* But that done, the courts have the power and it is their duty to declare the proposed law to be in fact no law. Here is an opportunity to review the whole question and to point out true lines for the exercise of judicial power.

II.

We now urge upon this court that this law is unconstitutional and void because in violation of that provision of the so-called "Harrison Act" which prohibits the passage of local or special laws creating, increasing or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed.

This act, for the purpose of fixing the compensation of county officers of the counties of the territory, divides them into six classes, based upon the assessment of property.

The greater the assessment, the higher the class and the more the compensation of the county officers. These officers are all therefore interested in swelling valuations, as their salaries and fees are directly affected thereby, the amount January 1st fixing the compensation for that year. Therefore an arbitrary classification is established.

In one county one rule of assessment may send it up to a higher class; in another, another rule may send it down to a lower class. In one county, where there are few people, but a mining camp or two with expensive plants, or with a long line of railroad, is sent up in class, and therefore pays its officers high salaries for little work; while another county, without such property, but a larger population, is in a lower class and its officers receive lower pay for more labor.

This classification violates the principle of uniformity and is void.

This is a new system of classification. A careful search has revealed no such law to us.

*Encyclopedia of Law, Vol. 3, p. 396, note*, says: "The only proper classification of cities and towns is by population." Citing *Commonwealth vs. Patton, 88 Pa. St., 358; Wheeler vs. Phila., 77 Pa. St., 338; Kilgore vs. Magee, 85 Pa. St., 401; People vs. Cooper, 83 Ill., 585.*

We have not the Pennsylvania cases at hand. Obviously by this law the burden of government may rest more heavily upon a citizen in one county, as aforesaid, than in another.

Classification by population has been upheld as approximately equal, and so, general. But such a classification as this, which affects the people in one part of the territory differently than in others, is local and special. This law makes the county recorders *ex-officio* clerk of the board in all but the first class counties. It therefore legislates the clerks appointed by the boards in all the territory, except three, out of office. The law allows the board to allow a deputy to the recorder in some of the counties and in others does not, so differently affecting those now in office, and

hence it is local and special. It legislates assessors out of office during their term and makes the sheriff assume the duties in some counties and an assessor is appointed by the board in other counties. Such sheriffs will struggle to raise their salaries for the next year by swelling the assessment for this year, and so some counties will be advanced in class while others are sent down the list. It takes the fees of incumbent recorders away from them and gives them to the treasury.

"Any statute which can apply to but a portion of the state, though purporting to be a general statute, is special legislation." *Ency. Law, Vol. 3, p. 697; Ency. Law, Vol. 23, p. 149-150,* and cases cited.

The classification must be reasonable, the objects must be germain to the legislative purpose, with similar characteristics and like relations, and if not so, the classification is incomplete and faulty, and the legislation void. *Ib.*

"There is no natural connection between the number of inhabitants of a city and its right to fund its floating debt, hence a statute conferring that power on cities of over 25,000 was void." *State vs. Trenton, 42 N. J. L., 486.*

"So as to method of laying out streets." *State vs. Parsons, 40 N. J. L., 11.*

*State vs. Plainfield, 24 Atl. Rep., 494,* where classification by population is held to be void, where that alone distinguishes. There must be some reason in the subject matter of the legislation which leads to the classification. There is no reason, says the court, why owners of real estate in one sized city should be deprived of a voice and not in another.

An act authorizing cities of the second class to appoint a physician one way different from the others is void. *Helfer vs. Simmons, 22 Atl. Rep., p. 120.*

This case dicusses fully when classification by population will be sustained and when not. See *Earl vs. Board, 55 Cal., 489.*

"A law which classified and applied to all cities where a German newspaper had been published for three years is void." *State vs. Trenton, 24 Atl. Rep., 478.*

"So a law classifying by population, number of wards and number of councilmen is void." *State vs. Wood, 49 N. J. L., 88; Sutherland on Stat. Con., sec. 127, 128, 129,* and cases cited.

The Harrison Act (*Supplement to U. S. Rev. Stat., p. 337-8,*) among other things enacts that legislatures of the territories shall not pass any local or special laws in any of the following cases: * * Regulating county or township affairs. * * For the assessment and collection of taxes

* * for territorial, county, township or road purposes. * * Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which such officers are elected or appointed. * * In all the cases where a general law can be made applicable no special law shall be enacted.

No case has been cited where such a classification has been held valid by the courts. Case after case may be found where classification by population has been upheld, and that is no doubt the law where it appears to the court that classification has been resorted to by the law-makers in good faith and for the purpose of adopting general legislation for all of a class. On the other hand, we have cited many cases, and many can be found where the courts have decided laws to be unconstitutional where elassification by population was resorted to, as was in the case of Bravin against the city of Tombstone. This law adopts a system of classification by the assessed values of property for the evident purpose of making a rule of pay of officers, and tenure of their term and the appointing power thereof in some counties differing from those of others. There is nothing in the principle of classification adopted which bears upon or relates to the question of compensation. It is purely arbitrary, and the effect is to localize legislation. It makes one law in some of the counties and another law in others. It makes the burden of taxation upon the citizen rest more heavily in one county and lighter in others. The principle of equality is disregarded, which is the very soul, purpose and object of the prohibitions of the Harrison Act. The intention of that act is that all the people of Arizona shall live under the same laws and that principle has been violated clearly and distinctly in this act. It violates other prohibitions of the act, as follows: The act under consideration is obnoxious to the provision forbidding special laws "regulating county and township affairs." The general law of Arizona, par. 456 of the R. S., designates the county officers. The statutes also prescribe the duties of each officer. Paragraphs 457, 458 and 460 of the R. S. and amendments, provide that the duties devolving upon certain county officers may be performed by certain other county officers acting in an ex-officio capacity. Par. 467 of the R. S., as amended in 1889, Stat. 1889, page 73, fixes the term of all the county officers at two years. The act under consideration makes the sheriff in counties of the 3d, 4th, 5th and 6th classes ex-officio assessor. The sheriff is elected by the people for the term of two years, and he is therefore assessor of such counties for the term of two years. The act limits the

term of office of the assessor in counties of the first and second class to one year and provides that the assessor shall be appointed by the board of supervisors. The act is therefore special legislation. It provides in effect that the assessor shall be elected in four classes of counties and shall hold his office for the term of two years, and that in two classes of counties the assessor shall be appointed by the board of supervisors and shall hold his office for but one year. The term of office and manner of selecting the officer are classified arbitrarily and according to the classification of the county, and for this purpose two classes of counties are created. Counties of the first and second class constitute one class or division, and counties of the third, fourth, fifth and sixth classes constitute the other class or division. Such legislation cannot stand. *Morrison vs. Bachert, 5 A., 739; State vs. Township Comm. of Northampton, 14 A., 587.*

An act authorizing the boards of freeholders in the respective counties, except such counties as have road boards, to lay out, open and improve a public road in each of the counties in the state, was held unconstitutional in New Jersey. *State vs. County of Hudson, 11 Atl., 135.*

An act purporting to fix at three years the term of office of city physician in all cities in which it was not previously fixed by authorization of law, and to take from said cities the power to diminish the salary attached to that office, is special legislation. *State vs. City of Orange, 25 Atl., 268.*

We have seen that the term of all county officers in Arizona were "previously fixed by authority of law."

The act under consideration is obnoxious to that provision of the Harrison act which forbids the territorial legislature to pass a special law "for the assessment and collection of taxes for territorial, county, township or road purposes." *Stewart vs. Collier, 17 S. E. Rep., 279.*

The act is also in conflict with that provision of the Harrison act which prohibits the territorial legislature from passing a special law "in all other cases where a general law can be made applicable, no special law shall be enacted." No one will pretend to say that a general law cannot and should not be made applicable to all the counties of the territory, so far as to the duration of the term of office and the manner of the election or appointment of the county assessor is concerned. The sheriff might have been made assessor in all of the counties for the term of his office, two years, or the assessor might be elected in all of the counties for two years. Instead, we have one division of the counties comprising the 3d, 4th, 5th and 6th classes, and the other

division of counties embracing the 1st and 2d classes, and the law operates differently upon each of these two divisions. The legislature might have as well provided that the assessor should be elected or appointed in the 1st and 2d class counties for one and two years respectively, and in the 3d, 4th, 5th and 6th classes for three, four, five and six years each respectively, or it might have as well provided for the election of the assessor in all of the counties except counties of the first class, and conferred upon the board of supervisors the power to appoint the assessor in counties of the first class. Had it done so, no one would deny the invalidity of the law. Upon this point no authorities need be cited.

Under the constitution of New Jersey, prohibiting the passage of local or special laws "creating, increasing or decreasing the percentage or allowance of public officers for the term for which they were elected or appointed," Laws of N. J., 1880, as amended in 1884, providing that in all counties where the county clerks are now or hereafter shall be paid by annual salary, the salary to be in lieu of all other compensation, is unconstitutional, as local, Camden being the only county to which it applies. *Halleck vs. Hollinghead, 6 A., 433.*

In the case of the *City of New Brunswick vs. Fitzgerald*, cited in *8 Atl., 729*, the court of errors and appeals of the state of New Jersey, in construing the first clause of section 1 of an act of the legislature of that state, of March 25, 1885, which provided and established the tenure of office of officers and men of the police department of any city to be during good behavior, except where the term of office of such officers or employes is fixed by statute, held it unconstitutional, as being special, since the regulation it introduces and the exception by which that regulation is limited give different kind of cities a different kind of tenure of office, and fix no regulation common to all.

In this holding, all of the court agreed. The dissenting opinion in that case disagrees with the majority of the court upon the construction of another clause of the act, but fully concurs with the majority of the court in the construction of the clause above cited.

We call the especial attention of the court to that case, as we think it decisive of the question here under consideration. Respectfully submitted.

WM. H. BARNES,
*Attorney for Appellant.*

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# Supreme Court of the United States.

*OCTOBER TERM 1895.*

No. 756.

W. A. HARWOOD, APPELLANT,

*vs.*

A. WENTWORTH, APPELLEE.

*Appeal from the Supreme Court of the Territory of Arizona.*

(16,046)

P. P.

# Supreme Court of the United States.

**OCTOBER TERM 1895.**

No. 756.

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W. A. HARWOOD, APPELLANT.

*VS.*

A. WENTWORTH, APPELLEE.

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***Appeal from the Supreme Court of the Territory of Arizona.***

As the case at Bar, seems to me to be on all fours with Field vs. Clark, 143 U. S. 649, I am content to submit the case upon the authority of that decision.

I cite also the case of Lions vs. U. S. 153 U. S. 663.

As there are grave public questions involved I have consented, and again consent, that this case be submitted to the Supreme Court of the United States under Rule XX in the hope that there may be a speedy decision of of the case.

Very Respectfully,

A. WENTWORTH,

Pro se